



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced:	01/14/03	Bill No:	ACA 7
Tax:	Local taxes	Author:	Dutra
Board Position:		Related Bills:	SCA 2 (Torlakson)

BILL SUMMARY

This bill, a constitutional amendment that would require statewide majority voter approval prior to going into effect, would authorize a county, a city and county, and a regional transportation agency, subject to 55 percent voter approval, to impose an additional sales and use tax at a rate of 1/2 percent to fund transportation projects.

ANALYSIS

Current Law

Under **Article XIII A, Section 4, of the California Constitution**, cities, counties, and special districts, by a two-thirds vote of the voters of such districts, may impose special taxes, except ad valorem taxes on real property or a transactions tax or sales tax on the sale of real property within such districts.

Under **Article XIII C, Section 1, subdivision (a), of the California Constitution**, "General tax" means any tax imposed for general governmental purposes. Under Article XIII C, Section 1, subdivision (d), of the California Constitution, "Special tax" means any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund.

The **Sales and Use Taxes Law** (Part 1, Division 2, Revenue and Taxation Code), provides that a sales tax is imposed on retailers for the privilege of selling tangible personal property at retail in this state. The use tax is imposed upon the storage, use, or other consumption of tangible personal property purchased in this state. Either the sales tax or the use tax applies with respect to all sales or purchases of tangible personal property, unless specifically exempted.

The **Bradley-Burns Uniform Local Sales and Use Tax Law** (Part 1.5, Division 2, Revenue and Taxation Code) authorizes counties and cities to impose a local sales and use tax. The local sales tax is imposed on all retailers for the privilege of selling tangible personal property at retail; the local use tax is imposed on the storage, use, or other consumption of tangible personal property purchased from any retailer.

Currently, the statewide sales and use tax and local tax rate is 7.25 percent. Of the 7.25 percent base rate, 6 percent is the state portion and 1.25 percent is the local portion. The components of the statewide base sales and use tax rate of 7.25 percent are as follows:

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- 5 percent state tax is allocated to the state's General Fund which is dedicated for state general purposes (Sections 6051, 6051.3, 6201, and 6201.3 of the Revenue and Taxation Code);
- 0.50 percent state tax is allocated to the Local Revenue Fund which is dedicated to local governments to fund health and welfare programs (Sections 6051.2 and 6201.2 of the Revenue and Taxation Code);
- 0.50 percent state tax is allocated to the Local Public Safety Fund which is dedicated to local governments to fund public safety services (Section 35 of Article XIII of the California Constitution);
- 1.25 percent local tax of which 1 percent is allocated to city and county operations and 0.25 percent is allocated for county transportation purposes and may be used only for road maintenance or the operation of transit systems (commencing with Section 7200 of the Revenue and Taxation Code).

As previously stated, under the Bradley-Burns Law, the local tax portion is fixed at 1.25 percent. All counties within California have adopted ordinances under the terms of the Bradley-Burns Law and levy the 1.25 percent local tax. Cities are also authorized to impose a sales and use tax rate of up to 1 percent, which is credited against the county rate so that the combined local tax rate under the Bradley-Burns Law does not exceed 1.25 percent.

Under the **Transactions and Use Tax Law** (Parts 1.6 and 1.7, Division 2, Revenue and Taxation Code) counties are authorized to impose a transactions and use tax at a rate of 0.25 percent, or a multiple thereof, if the ordinance imposing such a tax is approved by the voters. The maximum allowable combined rate of transactions and use taxes levied in any county may not exceed 1 ½ percent, with the exception of the City and County of San Francisco and the County of San Mateo, whose combined rates may not exceed 1 ¾ and 2 percent, respectively.

Section 7285 of the Transactions and Use Tax Law additionally authorizes counties to levy a transactions and use tax at a rate of 0.25 percent, or multiple thereof, for general purposes with the approval of a majority of the voters. Section 7285.5 permits the board of supervisors of any county to levy a transactions and use tax at a rate of 0.25 percent, or multiple thereof, for specific purposes with the approval of two-thirds of the voters.

Also, under the Transactions and Use Tax Law, through specific legislation, some cities and special districts have been authorized to levy a transactions and use tax for either a general tax or a special purpose tax. Currently, there are 40 districts (cities, counties, special districts) that levy a transactions and use tax with tax rates ranging from 0.125 percent to 0.50 percent. The combined state, local, and transaction and use tax rates range from a low of 7.375 percent to a current maximum of 8.75 percent.

Chapter 91 (Stats. 2000, AB 2928, Torlakson) transfers the state's share of revenue from the sales tax on gasoline to a newly established Transportation Infrastructure Fund, for the five-year period from July 1, 2001 to June 30, 2006 to fund statewide transportation needs. A specified amount of the revenues in the Fund is allocated on a

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quarterly basis to fund specific transportation projects, and the remainder is allocation as follows: (a) 40% to the Department of Transportation (CalTrans) for capitol improvement projects in the State Transportation Improvement Program, (b) 40% to cities and counties for subventions for maintenance, rehabilitation, and reconstruction work on local streets and roads, and (c) 20% to the Public Transportation Account for transit and rail purposes.

Proposed Law

This bill would add Article XIX C to the California Constitution to authorize a county, a city and county, or a regional transportation agency, with the approval of 55 percent of the voters in the respective jurisdiction, to impose a sales and use tax at a rate of 1/2 percent for the exclusive purpose of funding local and regional transportation planning, research, design, construction, operation, maintenance, and rehabilitation, and environmental mitigation related to the impacts of transportation projects. Specifically, this bill would provide that:

- If a transactions and use tax of limited duration, imposed for transportation purposes or for general purposes, **is not in effect** in the jurisdiction of a county, a city and county, or a regional transportation agency on the date that the tax is approved by the voters, the tax is imposed for **a period of 20 years**. The new tax would be effective on the first day of the first calendar quarter that commences more than 90 days after the approval of the tax by the voters.
- If a transactions and use tax of limited duration, imposed for transportation purposes or for general purposes, **is in effect** in the jurisdiction of a county, a city and county, or a regional transportation agency on the date that the tax is approved by the voters, the tax is imposed for **a period of not more than 30 years**. The new tax would be effective upon the first day that the transactions and use tax is repealed or otherwise becomes inoperative.
- The Board would be charged with the administration, collection, and allocation of the tax and would be reimbursed for its related costs. The revenues from the new tax would be deposited in the newly-created Local Transportation Infrastructure Account in the State Transportation Fund.
- A "regional transportation agency" is defined as follows: (1) the Metropolitan Transportation Commission created by Section 66502 of the Government Code; (2) the Los Angeles County Metropolitan Transportation Authority; (3) the Orange County Transportation Authority; and (4) any local or regional transportation entity that is designated by statute as a regional transportation agency.

This Constitutional amendment must be approved by a majority of California voters. Upon passage in the Senate and Assembly, this bill would be put on the next statewide ballot.

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Background

Proposition 62, passed by the voters on November 4, 1986, established new requirements for the adoption of new or higher general and special taxes by local agencies. The measure specifically required that any tax for general purposes be approved by a majority of the voters and that any tax for specific purposes be approved by two-thirds of the voters.

In September 1995, the California Supreme Court upheld Proposition 62's voter approval requirements for local taxes. In the decision, *Santa Clara County Local Transportation Authority v. Guardino* (1995), the California Supreme Court upheld the two-thirds voter approval provision of Proposition 62. This decision raised important implications for other special (transportation) districts that passed transactions and use tax measures by a majority vote. Most of these measures had sunset provisions (the majority were authorized for a 20 year period), which requires voter reauthorization if the taxes are to remain in effect.

In 1991 and 1992, two court decisions declared that measures passed by the voters of San Diego and Monterey counties, which imposed a special purpose tax, failed to get the required two-thirds vote. In the decision, *Rider v. County of San Diego* (1991), the California Supreme Court held that the Agency (San Diego County Regional Justice Facility Financing Agency) was a special district and the transactions and use tax imposed was a special tax. Since the Agency was a special district and the transactions and use tax it imposed was special tax, the court ruled that the imposition of the tax violated Proposition 13 which requires approval of the tax by at least two-thirds of the voters.

In the decision, *Monterey Peninsula Taxpayers Association v. County of Monterey* (1992), the First District Court of Appeal ruled that a tax adopted under Revenue and Taxation Code Section 7285.5 was in violation of Proposition 13. Revenue and Taxation Code Section 7285.5 (subsequently amended) had authorized a county to establish an authority for specific purposes that could levy a transactions and use tax with a majority voter approval. The court found that a tax adopted under Section 7285.5, without approval of two-thirds of the voters, violated Proposition 13. Sections 7285 and 7285.5 were amended (AB 1123, Ch. 251, 2001) to add language clarifying the following: (1) Section 7285 authorizes counties to levy a transactions and use tax for general purposes; and (2) Section 7285.5 deletes the necessity of forming an authority to levy a transactions and use tax for special purposes, and requires two-thirds voter approval of a special purpose tax.

Proposition 218, passed by the voters on November 5, 1996, added Articles XIIC and XIID to the California Constitution. Proposition 218 requires, among other things, that (1) any tax imposed for general governmental purposes must be approved by a majority of the voters (including taxes imposed by chartered cities); (2) any tax imposed for specific purposes must be approved by two-thirds of the voters; (3) any tax imposed for a specific purpose is a "special tax," even if the funds are placed into a general fund; and (4) special purpose districts or agencies, including school districts, shall have no power to levy general taxes.

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COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author to allow counties, cities and counties, or regional transportation agencies to pass or extend transactions and use tax measures, with a 55 percent voter approval, for funding transportation projects.
2. **This bill would change the vote requirement for local taxes.** This bill would amend the state Constitution to require a 55 percent vote to pass or extend transactions and use taxes. Nearly all of the existing transactions and use taxes were initially passed by a majority vote, but a subsequent court decision now requires two-thirds voter approval. This Constitutional amendment must be approved by a majority of California voters before the new voter-approval threshold could go into effect.
3. **Currently, there are 17 counties that impose a county-wide transactions and use tax for transportation purposes.** Many of these counties' transactions and use tax measures were approved by a majority vote. Of the 17 counties, 14 had measures that contained sunset provisions. The sunset dates of these taxes range from 2005 to 2011, with the exception of Alameda County. The Alameda County Transportation Authority transactions and use tax expired on March 31, 2002. Voters in Alameda County approved the Alameda County Transportation Improvement Authority transactions and use tax effective April 1, 2002, with a sunset date of March 31, 2022. Voters of Riverside County approved (by a two-thirds vote) an extension of the existing Riverside County Transportation Commission transactions and use tax from June 30, 2009, to June 30, 2039.
4. **Suggested Technical Amendments.** This bill provides that the tax will be administered in the same manner as the tax imposed under the Sales and Use Tax Law, Part 1, Division 2 of the Revenue and Taxation Code. The reference to Part 1 means that this tax will be administered in accordance with the provisions under the Sales and Use Tax Law. However, there are statutory and administrative differences between the State's sales and use taxes and transactions and use taxes levied by local entities. Namely, the tax is generally collected on a place-of-sale basis under the Sales and Use Tax Law (and the Bradley-Burns Uniform Local Sales and Use Tax Law); whereas, the tax is collected on a place-of-use basis under the Transactions and Use Tax Law. Since it is the author's intent that local agencies be allowed to pass or extend transactions and use tax measures for transportation purposes, it is recommended that the reference to the Sales and Use Tax Law be deleted and that a reference to the Transactions and Use Tax Law (Part 1.6, Division 2 of the Revenue and Taxation Code) be added.

In order for the Board to administer the proposed tax under provisions consistent with existing Transactions (Sales) and Use Tax Law, it is suggested that the following language be added to this bill:

SECTION 1. (a) Notwithstanding Section 4 of Article XIII A, Section 2 of Article XIIIC, or any other provision of this Constitution, for the exclusive purpose of funding local and regional transportation planning, research, design,

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construction, operation, maintenance, and rehabilitation, and environmental mitigation related to the impacts of transportation projects, a county, a city and county, or a regional transportation agency may, with the approval of 55 percent of the voters of the jurisdiction voting on the proposition, impose the following transactions and use tax within its jurisdiction, pursuant to Part 1.6, Division 2 of the Revenue and Taxation Code:

(1) For the privilege of selling tangible personal property at retail, a tax imposed, pursuant to Section 7261 of the Revenue and Taxation Code, upon all retailers at the rate of one-half of 1 percent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in the jurisdiction.

(2) An excise tax imposed pursuant to Section 7262 of the Revenue and Taxation Code, upon the storage, use, or other consumption in the jurisdiction at the rate of one-half of 1 percent of the sales price of the property.

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(b) (4) The tax described in subdivision (a) shall be administered in the same manner as the tax imposed pursuant to the Transactions and Use Tax Law (Part 1.6, Division 2 of the Revenue and Taxation Code), or its successor, and shall be subject to any exemption from taxation set forth in that law.

The reference to Part 1.6 of the Revenue and Taxation Code (Transactions and Use Tax Law) is needed as it contains the administrative statutes that designate when the tax becomes operative, how the Board is paid for enforcing and administering the tax, when revenues are distributed, when the agreement to administer the tax must be executed, etc. Also included are provisions that must be contained in the ordinance levying the tax. Without this authority, the Board cannot administer and collect the tax.

5. **Other technical concerns.** This bill provides that the Board shall allocate the tax revenues no less frequently than on a quarterly basis. Existing Transactions and Use Tax Law requires that the Board distribute the tax revenues to local jurisdictions as promptly as feasible, but at least twice in each calendar quarter. In order to ensure a steady cash flow to local governments, the Board makes every effort to distribute these revenues on a monthly basis using a specified formula.

Restricting the distributions to once a quarter could result in administrative and fiscal difficulties to local governments. Therefore, Board staff recommends that the language be amended to read:

(d) The tax described in subdivision (a) shall be collected and administered by the State Board of Equalization, or its successor agency, pursuant to Part 1.6, Division 2 of the Revenue and Taxation Code. The revenues derived from that tax shall be deposited in the Local Transportation Infrastructure Account, which is hereby created in the State Transportation Fund. The State Board of Equalization shall transmit the moneys in that account as follows:

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6. **The language of this bill indicates that the Board's administrative costs are not subject to the cap restriction in the Transactions and Use Tax Law.** This bill provides that the Board can deduct its costs of collection and administration. Existing Transactions and Use Tax Law provides that the Board's administrative costs are subject to the following caps: (1) for jurisdictions imposing a transactions and use tax rate of 1/2 percent or greater, the amount charged by the Board cannot exceed 1.5 percent of the tax revenues generated; (2) for jurisdictions imposing a transactions and use tax rate ranging from 1/4 percent up to but less than 1/2 percent, the amount charged by the Board cannot exceed 3 percent of the tax revenues generated; and (3) for jurisdictions imposing a transactions and use tax rate under 1/4 percent, the amount charged by the Board cannot exceed 5 percent of the tax revenues generated.

The effect of these provisions is that the General Fund must make up the difference between the costs incurred by the Board and the amount the Board is permitted to charge. As a result, the State ends up subsidizing the transactions and use tax system. No such subsidies are available to the jurisdictions participating in the Bradley-Burns Uniform Local Sales and Use Tax system. This bill does not address whether the cap would apply to the Board's costs associated with the administration of taxes proposed by this bill. Does the Legislature want the Board's administrative costs to be subject to the cap in Section 7273?

Additionally, this bill does not address the tax rate restriction in the Transactions and Use Tax Law. Existing Transactions and Use Tax Law provides a 1.5 percent rate cap in any county, with the exception of San Francisco and San Mateo counties which have a 1.75 and 2 percent rate cap, respectively. If the Legislature does not want this tax to be subject to the cap, a provision should be added to this bill to increase, or to exempt this tax from, the rate cap provision contained in Part 1.6, Division 2 of the Revenue and Taxation Code.

Board staff is willing to work with the author's office in drafting amendments to the bill that would address these issues.

7. **This bill does not clearly spell out the relationship between the new ACA 7 tax and subsequent transactions and use taxes.**

This bill provides that if a transactions and use tax of limited duration, imposed for transportation purposes or general purposes, *is not in effect* when the new ACA 7 tax is approved by the voters, the new ACA 7 tax is imposed for a period of 20 years commencing with the first calendar quarter that starts more than 90 days from the date that the new ACA 7 tax is approved. This bill also provides that if a transactions and use tax of limited duration, imposed for transportation purposes or general purposes, *is in effect* when the new ACA 7 tax is approved by the voters, the new ACA 7 tax is imposed for a period of 30 years commencing with the first day that the old tax is repealed or otherwise becomes inoperative.

Currently, there is no county, city and county, or regional transportation agency that imposes more than one tax of limited duration, for transportation and general purposes. The cities of West Sacramento and Woodland in Yolo County currently impose a tax of limited duration for general purposes. However, Yolo County

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imposes no county-wide tax. If an entity (county, city and county, or regional transportation agency) has an existing tax of limited duration for transportation purposes or general purposes and then adopts a second tax of limited duration for transportation purposes or general purposes, does the entity have to repeal both existing taxes before it can adopt the new ACA 7 tax? In other words, does an entity have to repeal all taxes of limited duration for transportation purposes and general purposes before it can adopt the ACA 7 tax? Also, if an entity has adopted the ACA 7 tax, is the entity prohibited from adopting additional taxes of limited duration for transportation purposes and general purposes?

While Board staff does not see a problem in administering this provision of ACA 7 now, there could be a problem in the future as counties and cities adopt new taxes in addition to the ACA 7 tax. The bill needs to clarify the relationship between a new ACA 7 tax and future taxes of limited duration for transportation and general purposes.

- 8. Related Legislation.** SCA 2 (Torlakson) would constitutionally authorize cities, counties, cities and counties, and regional transportation agencies, with the approval of the majority of the voters in the jurisdiction, to impose a transactions and use tax to be used exclusively for funding transportation projects and services and related smart growth planning. The Board voted to support this bill.

COST ESTIMATE

This bill by itself would not result in additional costs to the Board. Counties and cities are required to contract with the Board to perform functions related to the transactions and use tax ordinance, and reimburse the Board for its preparation costs to administer the ordinance as well as the costs for the Board's ongoing services in actually administering the ordinance.

REVENUE ESTIMATE

To the extent that this bill makes it easier for local governments to impose or extend local transactions and use taxes, this bill, if approved statewide, would increase local government transportation revenues. The revenue impact would be specific to each local government that approved a tax.

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